

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

---

Investigation by the Department of Telecommunications  
and Energy on its own Motion into the Appropriate  
Regulatory Plan to succeed Price Cap Regulation for  
Verizon New England, Inc. d/b/a Verizon Massachusetts'  
intrastate retail telecommunications services in  
the Commonwealth of Massachusetts

---

D.T.E. 01-31-Phase I

November 30, 2001

HEARING OFFICER RULING ON MOTION OF AT&T COMMUNICATIONS OF NEW  
ENGLAND, INC. FOR PROTECTIVE TREATMENT OF CONFIDENTIAL  
INFORMATION, AND MOTION BY VERIZON MASSACHUSETTS FOR  
CONFIDENTIAL TREATMENT

I. INTRODUCTION

On September 21, 2001, Verizon Massachusetts ("Verizon" or "VZ") filed with the Department of Telecommunications and Energy ("Department") a Motion for Confidential Treatment of data provided by Verizon in the rebuttal testimonies of Robert Mudge and William Taylor, filed with the Department on September 21, 2001, and Verizon's response to information request NEPCC-VZ-2-6, filed with the Department on September 18, 2001 ("VZ Motion"). In addition, on November 14, 2001, AT&T Communications of New England, Inc. ("AT&T") filed a Motion for Protective Treatment of Confidential Information concerning the attachments to Verizon's supplemental response to information request AG-VZ-2-8, filed with the Department on November 2, 2001 ("AT&T Motion"). The information requests and responses subject to AT&T's and Verizon's motions for confidential treatment are attached as Appendix A. No party commented on or objected to AT&T's motion or Verizon's motion.

II. STANDARD OF REVIEW

Information filed with the Department may be protected from public disclosure pursuant to G.L. c. 25, § 5D, which states in part that:

The [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be upon the proponent of such protection to prove the need for such protection. Where such a need has been found to exist, the

Department shall protect only so much of the information as is necessary to meet such need.

G.L. c. 25, § 5D permits the Department, in certain narrowly defined circumstances, to grant exemptions from the general statutory mandate that all documents and data, regardless of physical form or characteristics, received by an agency of the Commonwealth are to be viewed as public records and, therefore, are to be made available for public review. See G.L. c. 66, § 10; G.L. c. 4, § 7, cl. twenty-sixth. Specifically, G.L. c. 25, § 5D, is an exemption recognized by G.L. c. 4, § 7, cl. twenty-sixth (a) (“specifically or by necessary implication exempted from disclosure by statute”).

G.L. c. 25, § 5D establishes a three-part standard for determining whether, and to what extent, information filed by a party in the course of a Department proceeding may be protected from public disclosure. First, the information for which protection is sought must constitute “trade secrets, confidential, competitively sensitive or other proprietary information”; second, the party seeking protection must overcome the G.L. c. 66, § 10, statutory presumption that all such information is public information by “proving” the need for its non-disclosure; and third, even where a party proves such need, the Department may protect only so much of that information as is necessary to meet the established need and may limit the term or length of time such protection will be in effect. See G.L. c. 25, § 5D.

Previous Department applications of the standard set forth in G.L. c. 25, § 5D reflect the narrow scope of this exemption. See Boston Edison Company: Private Fuel Storage Limited Liability Corporation, D.P.U. 96-113 at 4, Hearing Officer Ruling (March 18, 1997) (exemption denied with respect to the terms and conditions of the requesting party’s Limited Liability Company Agreement, notwithstanding requesting party’s assertion that such terms were competitively sensitive); see also Standard of Review for Electric Contracts, D.P.U. 96-39 at 2, Letter Order (August 30, 1996) (Department will grant exemption for electricity contract prices, but “[p]roponents will face a more difficult task of overcoming the statutory presumption against the disclosure of other [contract] terms, such as the identity of the customer”); Colonial Gas Company, D.P.U. 96-18 at 4 (1996) (all requests for exemption of terms and conditions of gas supply contracts from public disclosure denied, except for those terms pertaining to pricing).

All parties are reminded that requests for protective treatment have not been and will not be granted automatically by the Department. A party’s willingness to enter into a non-disclosure agreement does not resolve the question of whether the response should be granted protective treatment. Boston Electric Company, D.T.E. 97-95, Interlocutory Order on (1) Motion for Order on Burden of Proof, (2) Proposed Nondisclosure Agreement, and (3) Requests for Protective Treatment (July 2, 1998).

### III. AT&T'S POSITION

In AT&T's Motion for Protective Treatment, AT&T argues that the two attachments provided by Verizon in its supplemental response to AG-VZ-2-8 contain competitively sensitive and highly proprietary AT&T information and trade secrets (AT&T Motion at 1). According to AT&T, Attachment 1 provides the number of AT&T lines by wire center that are included in Verizon's Massachusetts Competitive Profile (*id.*).<sup>1</sup> Attachment 2 is a compact disc ("CD-ROM") which includes all statewide E911 records for AT&T as of October 30, 2001 (*id.*). In its motion, AT&T argues that both attachments to Verizon's supplemental response to ATT-VZ-2-8 provide the location and telephone numbers of AT&T customers and include valuable commercial information that would provide competitors with a window into AT&T's planning and marketing strategy (*id.* at 5). AT&T asserts that competitors could use the location and telephone numbers of AT&T's customers to target specific geographic areas and specific customers for competition (*id.*). In addition, AT&T argues that the information sought to be protected would provide AT&T's competitors with direct insight into AT&T's internal investments, in particular the amount of facilities AT&T has in place at each wire center in order to serve the listed number of end-users (*id.* at 7). This information would allow competitors to determine whether AT&T has been engaged in extensive recent development of new facilities and whether AT&T will have to make substantial investments in the near future (*id.*). Finally, AT&T argues that its request for protective treatment is consistent with both federal law and prior Department orders and rulings in this and other Department proceedings (*id.* at 3-8).

### IV. VERIZON'S POSITION

In Verizon's Motion for Confidential Treatment, Verizon argues that portions of the Rebuttal Testimony of Robert Mudge ("Mudge") and Michael Doane ("Doane") (with associated attachments) and Verizon's response to information request NEPCC-VZ-2-6 should be afforded protective treatment (VZ Motion at 1). Verizon asserts that portions of the Mudge and Doane rebuttals display Verizon's confidential retail data and its estimate of the level of competition that it is experiencing in Massachusetts (*id.* at 3). Verizon argues that Attachment 1 to the Mudge rebuttal (*i.e.*, the Massachusetts Competitive Profile) contains competitive information on a disaggregated basis for every central office in Massachusetts, and protective treatment is appropriate to preserve the competitive interests of all telecommunications service providers in the state, including Verizon (*id.* at 3-4). Verizon asserts that in accordance with the September 14, 2001 hearing officer ruling, Verizon has provided all relevant information in the Massachusetts Competitive Profile to the Department and to those parties that execute a

---

<sup>1</sup> Verizon's Massachusetts Competitive Profile is a comprehensive collection of information detailing competitive activity in each Verizon central office in Massachusetts (Rebuttal Testimony of Robert Mudge, Att. 1).

mutually acceptable protective agreement (id. at 4). With regard to its response to information request NEPCC-VZ-2-6, Verizon states that its response contains a list of resellers of public access line (“PAL”) and public access smart lines (“PASL”) as well as the number of PAL and PASL lines that each provider resells (id.). Verizon asserts that in accordance with the September 14, 2001 hearing officer ruling, Verizon has made the response available to the Department and to parties that execute a mutually acceptable protective agreement (id. at 5).

In Verizon’s Motion, Verizon asserts that the information for which it seeks protective treatment is compiled from internal databases and is not shared with non-Verizon employees for their personal use, and that any dissemination to non-employees is labeled proprietary (id.). Verizon further argues that Verizon employees and agents using this information are subject to non-disclosure agreements and that the data are transferred internally over a protected network and marked proprietary (id.). Verizon asserts that Verizon marketing personnel are not given access to the information for the purpose of competing against other providers (id. at 5-6). Verizon contends that competitors can use the information to develop their own competitive offerings and identify which Verizon customers, exchanges, and services to “target” (id. at 6). Lastly, Verizon argues that the benefits of nondisclosure, and associated evidence of harm to Verizon and other carriers in Massachusetts, outweigh the benefits of public disclosure in this instance (id. at 6).

## V. ANALYSIS AND FINDINGS

### A. AT&T’s Motion

AT&T requests protective treatment of the two attachments to Verizon’s supplemental response to ATT-VZ-2-8 (AT&T Motion at 1).<sup>2</sup> The first attachment concerns the estimated number of AT&T UNE-P and E911 lines by wire center that are included in Verizon’s Massachusetts Competitive Profile (id.). Confidential treatment of Verizon’s Massachusetts Competitive Profile is discussed below. I determine that it is not necessary to treat a subset of the information contained within the Massachusetts Competitive Profile any differently than treatment of the Profile as a whole. Therefore, I will allow protective treatment of Verizon’s Attachment 1 consistent with the findings below with regard to protective treatment of the Massachusetts Competitive Profile. Attachment 2 of Verizon’s supplemental response to ATT-VZ-2-8 is a CD-ROM that includes statewide E911 records for AT&T as of October 30, 2001 (id.). In D.T.E. 01-31-Phase I at 8, Hearing Officer Ruling on AT&T’s Motion to Compel Discovery Responses by Verizon, or, in the Alternative, to Strike Testimony of Robert Mudge

---

<sup>2</sup> It is somewhat unorthodox for AT&T to request protective treatment of a Verizon response to an information request, as ordinarily it is the producing party that requests such treatment. However, because the Verizon response contains AT&T-specific data, I determine that AT&T’s motion should be considered on the merits.

and William Taylor, and Motion for Confidential Treatment by Verizon (September 14, 2001), AT&T's request to compel production of CLEC E911 database information was granted subject to protective conditions, and the Department conferred confidential status on the information. The E911 database information that is subject to AT&T's instant motion, which contains highly-specific AT&T customer information including addresses and telephone numbers, should likewise be afforded confidential status. Therefore, the Department will provide protective treatment to Attachment 2 to Verizon's supplemental response to ATT-VZ-2-8 pursuant to G.L. c. 25, § 5D.

B. Verizon's Motion for Confidential Treatment

Verizon's Motion for Confidential Treatment concerns portions of Verizon's Mudge and Doane rebuttal testimony, as well as the associated attachments to the testimony (including the Massachusetts Competitive Profile), and Verizon's response to information request NEPCC-VZ-2-6 (VZ Motion at 1). The Massachusetts Competitive Profile contains market information regarding every service provider and every central office in Massachusetts. I agree with Verizon that the Massachusetts Competitive Profile warrants protective treatment in order to preserve all Massachusetts service providers' competitive interests. With regard to Verizon's response to NEPCC-VZ-2-6, I also agree with Verizon that the number of PAL and PASL lines and the identity of the resellers of those lines is proprietary third-party information. Therefore, the Department will provide protective treatment to the portions of the Mudge and Doane rebuttal testimony, the attachments to the testimony, and Verizon's response to NEPCC-VZ-2-6, pursuant to G.L. c. 25, § 5D.

VI. RULING

AT&T's Motion for Protective Treatment is granted as described above. Verizon's Motion for Confidential Treatment is granted.

Under the provisions of 220 C.M.R. § 1.06(6)(d)(3), any party may appeal this Ruling to the Commission by filing a written appeal with supporting documentation within five (5) days of this Ruling. Any appeal must include a copy of this Ruling.

Date: November 30, 2001

\_\_\_\_\_/s/\_\_\_\_\_  
Paula Foley, Hearing Officer

## APPENDIX A

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY  
D.T.E. 01-31-Phase I

Information Requests Subject to Motion of AT&T Communications of New England, Inc. For  
Protective Treatment of Confidential Information and  
Verizon's Motions for Confidential Treatment

ATT-VZ-2-8S: Pursuant to a mutually agreeable protective agreement, please provide all  
phone numbers, by wire center, that Verizon contends represent AT&T  
customers. All documents provided in response to this information  
request should be filed with the Department under seal.

SUPPLEMENTAL  
REPLY:

Respondent: Robert Mudge

Verizon MA considers the requested data to be the confidential and  
proprietary information of AT&T and, pursuant to AT&T's specific  
request, may not be disclosed by Verizon MA without AT&T's  
authorization. The information is, accordingly, being provided only to  
the Department and to those parties to whom AT&T authorizes  
disclosure. The Company understands that AT&T will be filing a  
motion for confidential treatment of the relevant data.

NEPCC-VZ-2-6: Please provide any studies, reports, analyses, assessments reports or  
investigations conducted by Verizon that Verizon contends demonstrate  
the availability from CLECs or other service providers in Massachusetts  
of currently available services which are substitutes for or otherwise  
competitive with PAL or PASL.

REPLY: Respondent: Robert Mudge

Verizon MA has not conducted studies that focus solely on competitive  
alternatives to PAL and PASL services.

Verizon does have a Resale Ranking report that identifies resellers of  
PAL and PASL service in Massachusetts. The data contained within the  
Resale Ranking report are the confidential and proprietary information of  
the CLEC that may not be disclosed by Verizon MA without the CLECs'  
authorization. In light of the Hearing Officer's discovery ruling of

D.T.E. 01-31-Phase I

September 14, 2001, the information is being provided tot he Department and to those parties that execute a mutually acceptable protective agreement.

Please see the attached Resale Ranking Report – July 2001.